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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/704,808	11/02/2000	John F. Finley	1585.01	4313

28635 7590 11/14/2002

JOE D. CALHOUN  
319 PRESIDENT CLINTON AVENUE  
SUITE 205  
LITTLE ROCK, AR 72201

EXAMINER

MILLER, BENA B

ART UNIT

PAPER NUMBER

3712

DATE MAILED: 11/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application N .

09/704,808

Applicant(s)

FINLEY, JOHN F.

Examiner

Bena Miller

Art Unit

3712

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 31 October 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-20.

Claim(s) withdrawn from consideration: 21.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

  
Jacob K. Ackert  
Primary Examiner

Continuation of 5. does NOT place the application in condition for allowance because: although, applicant has amended to overcome some of the 112,2nd rejections, the claims as now amended does not overcome the prior art of record. It appears applicant is arguing the issues that were address by the Examiner (note, Paper #5, Final Office Action, 07/01/02). Also, it appears that applicant is arguing issues that have been overcome by applicant's amendment to the claims

In reference, to applicant's remarks that the "Examiner indicated in the telephone interview that the major obstacle to allowability had been overcome", the Examiner disagrees. The Examiner did not indicate in the telephone interview that the major obstacle to allowability had been overcome. The Examiner specifically indicated that the Examiner can not indicate any subject matter of the claimed invention allowable without the approval of the Supervisor or the Primary Examiner. Therefore, the statement indicated by the applicant is incorrect. Furthermore, in reference to applicant's remarks that the "Examiner tentatively stated that the claim amendments appearing herein will likely be sufficient to overcome the 102(b) rejections. Once again, the Examiner indicated that the claims can not be determined to overcome the prior art until the amend claims are set forth before the Examiner to determine whether or not the amended claims overcome the prior art of record. Therefore, the statement indicated by the applicant is incorrect. In this case, as noted above, the claims does not over come the rejections as set forth in the Final Office Action.

Finally, in reference to applicant requesting an allowance of submission without any extension fee for the reasons indicated by applicant The reasons are unconvincing and therefore the fee will not be waived.